Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In the Supreme Court of the United States
October Term, 1994

William A. Calvo, III,
Petitioner
- against -
The Florida Bar
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

APPENDIX VOLUME II

William A. Calvo, III, *Pro Se*
11355 Southeast 54th Avenue; Belleview, Florida 34420
(904) 245-4126

Dated: May 8, 1994

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Representative Materials From Pending Related Actions:

United States Court of Appeals for the 11th Circuit

In the United States Court of Appeals for the Eleventh Circuit; In the Matter of William A. Calvo, III; Misc. No. 94-1001.

Order of Disbarrment

It has been shown to the Court that the Supreme Court of the State of Florida has disbarred the above-named attorney from practice in that court. Pursuant to Rule 46-1(c)(4) of the Rules of the United States Court of Appeals for the Eleventh Circuit, it is ORDERED that said attorney be disbarred from practice in this court effective fourteen days after the date of this order unless this order is sooner modified or stayed.

IT IS FURTHER ORDERED by this Court that said attorney advise the clerk of the court of all pending appeals before this court in which he is the counsel of co-counsel of record.

This 5th day of January 1994.

Michael J. Cortez, Clerk

United States Court of Appeals for the 5th Circuit

United States Court of Appeals, Fifth Circuit, Office of the Court. Tel. 504-589-6514; 600 Camp Street; New Orleans, LA 70130.

Charles R. Fulbruge, III, Clerk

February 4, 1994

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Mr. William A. Calvo, III

Attorney at Law

P.O. Box 208

Belleview, Fl 34421-0208

Dear Mr. Calvo:

We have received notice from the Supreme Court of Florida that Mr. William A. Calvo, has been disbarred. Our roll of attorneys shows a William A. Calvo, II of Fort Lauderdale, Florida as being admitted to practice in this Court. On the assumption that you are the same per-

son, the enclosed Order to Show Cause is being issued. If this is incorrect, please advise this office so that corrective action can be taken.

Very Truly Yours,

CHARLES R. FULBRUGE,III,Clerk

By:_____

Karen J. Price, Chief

Administrative Support Div.

United States Court of Appeals, Fifth Circuit, Office of the Court. Tel. 504-589-6514; 600 Camp Street; New Orleans, LA 70130.

Charles R. Fulbruge, III, Clerk

March 1, 1994

Mr. William A. Calvo, III

Attorney at Law

P.O. Box 208

Belleview, Fl 34421-0208

Dear Mr. Calvo:

The Court advised me it will take no further action regarding your standing as a member of the Bar of this

Court pending the Supreme Court of the Unites States' action on your request they review your disbarrment by the Florida Supreme Court.

We request you keep up advised of the proceedings before the Supreme Court.

Very Truly Yours,

CHARLES R. FULBRUGE,III

Clerk

CRF:kjp

United States District Court for the Southern District of Florida

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

IN RE: William A. Calvo, III

_____:

ORDER TO SHOW CAUSE

An Order of Disbarrment, dated December 16, 1993, has been entered by the Supreme Court of Florida.

Pursuant to the Rules of Disciplinary Enforcement, United States District Court, Southern District of Florida, Rule 2(B), you are directed to file with this court, within 30 days after service of this Order to Show Cause, why the imposition of the identical discipline by the court would be unwarranted and the reasons therefore.

DONE AND ORDERED in chambers at Miami, Florida, this **15th** day of **March**, 1994.

/s/

C. CLYDE ATKINS

UNITED STATES DISTRICT JUDGE

Representative Response, Affidavit & Summary

The responses to the United States Courts of Appeals for the Fifth and Eleventh Circuits and the United States District Court for the Southern District of Florida, were virtually identical. For purposes of economy, only the Petitioner's response to the United States District

Court for the Southern District of Florida will be provided, unless other wise required by this Court:

Representative Response

The Honorable T.G. Chelotis

Clerk

UNITED STATES DISTRICT COURT FOR

THE SOUTHERN DISTRICT OF FLORIDA

Federal Courthouse Square

301 North Miami Avenue

Miami, Florida 33128-7788

Re.: *In the Matter of William A. Calvo, III*

Dear Sir:

In response to the Order to Show Cause issued by the Honorable C. Clyde Atkins, United States District Judge, dated March 21, 1994, enclosed please find my required written response thereto, accompanied for purposes of support by copies of:

1. A copy of related correspondence from the United States Court of Appeals for the Fifth Circuit;
2. My Motion for Rehearing filed with the Florida Supreme Court on December 30, 1993, and denied

on February 10, 1994, together with an appurtenant appendix;

3. My brief appealing the decision of the referee filed with the Florida Supreme Court on April 16, 1993;
4. My reply brief appealing the decision of the referee filed with the Florida Supreme Court on May 11, 1993;
5. The decision of the Florida Supreme Court; and
6. The decision of Securities and Exchange Commission Administrative Law Judge Regensteiner in the related 2e proceeding.

I have also included a 46 page narrative with a covering affidavit which I believe the Court will find useful in analyzing the other materials provided.

Very truly yours,

William A. Calvo, III

In the United States District Court

For the Southern District of Florida

In the Matter of

William A. Calvo, III

No. 94-_____

RESPONSE TO ORDER TO SHOW CAUSE

COMES NOW WILLIAM A. CALVO, III, *Pro Se* (the "Respondent"), and, pursuant to the provisions of the Rules of this Court Governing Attorney Discipline, respectfully requests that this Court determine for itself, the Respondent's fitness to practice law before it, notwithstanding the current determination of the Supreme Court of the State of Florida (the "Florida Bar Case"). In this regard, the Court is informed that the Respondent will file a petition for writ of certiorari with the Supreme Court of the United States seeking review of the decision of the Florida Supreme Court.

Filed herewith in support of this Motion are a copy of the Respondent's motion to the Supreme Court of Florida requesting a rehearing (the "Denied Motion for Rehearing"), a copy of the Respondent's original brief to the Florida Supreme Court and a copy of the Respondent's original reply brief to the Florida Supreme Court.

As grounds in support of this Motion, the Respon-

dent states as follows:

A. The Respondent prays that this Court investigate the underlying matter and reach its own conclusions on the fitness of the Respondent to practice law in the United States District Court for the Southern District of Florida, and as grounds therefore, states as follows:

1. The Florida Supreme Court refused to consider the standards that govern practitioners of securities laws, as reflected in official resolutions of the American Bar Association and the Association of the Bar of the City of New York, which the Respondent followed.

2. The Florida Supreme Court refused to consider the Respondent's obligations and rights under the rules governing the New York Bar, of which he is a member, in conjunction with its disciplinary proceeding.

3. The Florida Proceeding was fundamentally lacking in due process, as described in the argument which follows, including, without

limitation, the facts that the Respondent was not provided with adequate notice, a timely hearing, right to counsel, right to discovery, right to introduce competent evidence, right to mandatory judicial notice, right to exclusion of incompetent and prejudicial evidence, all as guaranteed by the constitutions of the United States and the State of Florida.

4. That the decision of the Florida Supreme Court is not supported by the record.

B. Filed herewith in support of this Petition are:

1. The Respondent's certified narrative.
2. A copy of the Respondent's motion to the Supreme Court of Florida requesting a rehearing, denied on February 10, 1994 (the "Denied Motion for Rehearing").
3. A copy of the Respondent's briefs (original and reply) to the Florida Supreme Court.
4. A copy of the decision of the Florida Supreme Court in this matter.
5. A copy of the decision of the Securities and

Exchange Commission administrative law judge in the related 2e proceeding.

6. A copy of the determination by the United States Court of Appeals for the Fifth Circuit to defer consideration for discipline in this matter.

C. As grounds in support of this Petition, the Respondent states as follows:

A. PRIOR DETERMINATIONS OF OTHER COURTS

1. The United States Court of Appeals for the Eleventh Circuit has previously addressed the facts underlying the decision by the Florida Supreme Court, in the case of Gallagher & Co. v SEC; Appeal Number 91-5476, decided by the United States Court of Appeals for the Eleventh Circuit on May 5, 1992 (the "Gallagher Case").

2. During oral argument before the United States Court of Appeals for the Eleventh Circuit on the morning of April 21, 1992, counsel to the Securities and Exchange Commission unequivocally, in response to a direct question from the bench, stated

that William A. Calvo, III, had not provided either an oral or written opinion authorizing the closing which was the subject matter of that case (the "Warehouse Closing").[1]

3. The Warehouse Closing was also the subject matter of the Florida Bar Case, as well as of the two decisions (the "Prior Warehouse Actions") on which such Court almost exclusively relied in reaching its conclusions.[2] However, the Prior Warehouse Actions were based on a motion for summary judgment at which neither evidence nor testimony was considered, and, the factual basis therefore was contradicted by both the assertion of counsel to the Securities and Exchange Commission in the Gal-

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1. Such admission was diametrically opposed to the allegations of the Florida Bar in the Florida Bar Case, although the Florida Bar introduced no evidence in support thereof. Based on such focal factor, this Court is urged to acknowledge that the conclusions of the Florida Bar Case are not correct.

2. The two decisions being SEC v Electronics Warehouse, Inc., 689 F.Supp. 53 (D. Conn. 1988), hereinafter sometimes referred to as the "Injunction Action"; and, In re.; William A. Calvo, III, SEC Admin. Proc. No. 3-7038 (1990) hereinafter sometimes referred to as the "2e Action".

lagher Case and almost all of the evidence at the hearing on the Florida Bar Case. Furthermore, the Florida Supreme Court ignored critical conclusions of the Securities and Exchange Commission judge who decided the 2e Action, *to wit*, that Mr. Calvo had been deceived by both Mr. Bremer and the Warehouse attorney, Mr. Granai, and that a permanent suspension was not warranted.[3]

4. The Florida Bar was successful in excluding evidence of the proceedings before the United States Court of Appeals for the Eleventh Circuit in the Gallagher Case during the hearing which resulted in the Florida Bar Case decision, thus, the admissions of the Securities and Exchange Commission which should have led to fundamentally different conclusions were not reflected in the decision.

5. The decision in the Injunction Action (almost seven

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3. This Court is urged to accept the reasoning of Judge Regensteiner in the 2e Action, and to note that the penalty imposed therein was completed more than three years ago.

years ago) was predicated on the assumption that the Respondent would continue to be permitted to practice law; and, the decision in the 2e Case[4] not only included the same assumption, but concluded, with reference to securities practice before the Securities and Exchange Commission, that the Respondent should be permitted to resume such practice on and after July of 1990, four years ago.[5]

6. It would be manifestly unfair and violative of the Respondent's rights to due process guaranteed by the Fifth Amendment to the Constitution of the United States of America to disbar him from the United States District Court for the Southern District of Florida without opportunity for a hearing at which this matter could be considered.

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4. Where Judge Regensteiner not only noted prosecutorial improprieties, but that the Respondent had been deceived with reference to the facts on which he reached his informal conclusions.

5. In addition, the Court is asked to note that the United States Court of Appeals for the Second Circuit, of which the Respondent is a member, affirmed the decision in the injunction action in 1989, but did not find it appropriate to impose professional discipline on the Respondent.

B. CONSTITUTIONAL DEFICIENCIES IN THE FLORIDA BAR CASE

I. Introduction

1. The Respondent filed a motion for rehearing with the Florida Supreme Court in which he detailed numerous and egregious constitutional deficiencies in the proceedings underlying such decision. Additional constitutional deficiencies and arguments applicable to the Florida Supreme Court's decision in the Florida Bar Case are contained in the brief and reply brief filed by the Respondent with the Florida Supreme Court in the Florida Bar Case, and are supported by voluminous materials contained in a three volume appendix filed with the subject reply brief. The Respondent will also file a petition for certiorari with the United States Supreme Court.

2. Copies of the Denied Motion for Rehearing, the Respondent's original brief and the Respondent's reply brief filed in the Florida Bar Case have been filed in support of this Petition and the arguments

reflected therein are incorporated by reference hereto.[6]

3. The Denied Motion for Rehearing, brief and reply brief filed by the Respondent in the Florida Bar Case reflect the following constitutional deficiencies:

II. Deprivation of Right to Counsel

1. The exclusion of the Respondent's legal counsel from the trial based on a motion by the Florida Bar claiming that it intended to call such counsel as a rebuttal witness[7] violated the Respondent's rights to due process guaranteed by the United States[8] and

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6. The Denied Motion for Rehearing, brief, reply brief and appendix filed with the Florida Supreme Court should form a starting point for investigation of this matter by a master or a grievance committee appointed by this Court. Such investigative body should then verify the information reflected in the affidavits of Ms. Francesca Daniels and Messrs. Paul C. Jenkins, Bobby Baldrica and James Scherer, which the Florida Supreme Court rejected as untimely, the two previously provided Bremer affidavits, which the Florida Supreme Court refused to consider as untimely provided, the Bremer tapes, which the Securities and Exchange Commission failed to provide; and, the Warehouse correspondence records of the Securities and Exchange Commission and National Association of Securities Dealers, Inc., which have never been provided.

7. Which it failed to do and never even discussed with such counsel.

Florida[9] Constitutions. Such exclusion, as detailed in the Respondent's Denied Motion for Rehearing, brief and reply brief filed with the Florida Supreme Court, were critically prejudicial to the Respondent.[10]

2. It is incontestable that during the trial of the Florida Bar Case, the referee, based on the motion

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8. See amendments Five, Six and Fourteen to the United States Constitution.

9. Due process is guaranteed by Section One, Article Nine of the Florida Constitution, which provides that "No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense ...." It is amplified by Sections Nine and Sixteen thereof to specifically guarantee the right to counsel. Assistance of counsel includes consultation and understanding of the accused's case before a trial, a consideration of his special interests in the cross-examination of witnesses and defensive evidence and in the making of argument and otherwise, see **Collingsworth v Mayo**, 173 F.2d 695 (1949). The denial of a reasonable opportunity to obtain counsel and to confer with him prior to trial is a denial of due process as contemplated by both the Florida and United States Constitutions, see **Cash v Culver**, 120 So.2d 590 (1960). The guarantees provided in Section One, Article Sixteen, are available to respondents in Florida Bar disciplinary proceedings, see, *e.g.*, **Weathers v Davis**, 196 So. 487 (1940).

10. Such prejudice was impliedly admitted in the Florida Bar's brief to the Supreme Court, where it criticized the Respondent's conduct of the hearing in not calling rebuttal witnesses or introducing exculpatory evidence.

of Bar Counsel and over the strenuous objection of Mr. Calvo, excluded Mr. Calvo's trial attorney, G. Richard Chamberlin,[11] from participation or attendance at the hearing. Larry D. Houston, Esquire, another attorney who Mr. Chamberlin intended to use to assist with technical evidentiary issues, was forced to conduct the defense, without any continuance, despite the fact that he knew practically nothing about the case or applicable law, and had never had an opportunity to speak to the numerous witnesses arranged for the trial.

3. The Florida Supreme Court was falsely led to believe by counsel to the Florida Bar during oral argument that Mr. Calvo was offered a choice by the referee in the Florida Bar Case to either use G. Richard Chamberlin, Esquire, as a witness or as his attorney, and that Mr. Calvo elected to use Mr.

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11. The Court is asked to judicially note that Mr. Chamberlin acted as counsel in the oral argument of the Gallagher Case, represented the Gallagher's before the Securities and Exchange Commission, represented the Respondent in the 2e Case, and consequently, was an expert in the Warehouse case.

Chamberlin as a witness, although he was never called for such purpose. In fact, as demonstrated in the letter provided by Mr. Chamberlin to the Chief Justice immediately following the oral argument, Mr. Calvo, when faced with such election chose to use Mr. Chamberlin as his attorney; however, counsel to the Florida Bar indicated that he intended to call Mr. Chamberlin as a rebuttal witness, whereupon the referee disqualified Mr. Chamberlin and ordered him out of the room. A copy of Mr. Chamberlin's letter, together with the affidavits of Mr. Calvo and of Larry D. Houston, Esquire, which accompanied such letter are annexed as exhibit 1-A to the Denied Motion for Rehearing filed in support of this Petition.[12]

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12. This Court is asked to note that Mr. Calvo's comments on page 8 of the record, lines 2 to 24 (copies of which are included in his letter to the Chief Justice), make it irrefutable that it was Mr. Whalen's stated intention of calling Mr. Chamberlin, as a witness, not the non-existent election by Mr. Calvo to do so, that led to his disqualification. It is also asked to note that the fact that Mr. Calvo had formally and on a timely basis, prior to the hearing, advised the referee and Bar counsel that he intended to call Mr. Whalen as a witness, did not impact the ability of the Florida Bar's counsel to participate in the proceeding.

4. Mr. Chamberlin was not a witness to any facts material to the proceeding nor did he have any knowledge thereof, except as obtained when acting as legal counsel to either Mr. Calvo during the appeal of the injunction and the 2e proceeding, or to the Gallaghers, thus, he could not have provided any testimony at the Final Hearing unless Mr. Calvo and the Gallaghers waived their rights to attorney client privilege. Because they did not, there was no basis for the use of Mr. Chamberlin as a witness by the Florida Bar, and, in fact, the Florida Bar never called Mr. Chamberlin as a witness or even interviewed him with that possibility in mind.[13]

5. Mr. Calvo was severely prejudiced by his inability to use Mr. Chamberlin's services, specifically, in that he was left with Larry D. Houston, who had never interviewed any witnesses and was unfamiliar with the facts or law involved,[14] to conduct his defense.

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13. The referee made no inquiry as to what evidence Mr. Chamberlin was to provide on behalf of the Florida Bar.

14. Assistance of counsel includes consultation and understanding of the accused's case before a trial, a consideration of his special inter-

Consequently many rebuttal witnesses to Mr. Bremer's testimony (*e.g.*, Ms. Daniels and Messrs. Jenkins, Baldrica and Scherer) were never called to testify. Their examination, and an examination of the financial reports for Messrs. Jenkins, Baldrica and Scherer would have clearly demonstrated that Bremer's testimony that Mr. Calvo assisted or attempted to assist in locating loans to effect a fraudulent closing was totally false. In addition, being unprepared and unfamiliar with the applicable law, Mr. Houston failed to rebut the testimony of the Florida Bar's expert through use of the text of Securities and Exchange Commission rules 436(e) or 478, or the Florida Bar's own materials from the lecture outline for the Florida Bar's 1987 continuing legal education program entitled *Responsibilities and Liabilities of Corporate*

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ests in the cross-examination of witnesses and defensive evidence and in the making of argument and otherwise, see Collingsworth v Mayo, 173 F.2d 695 (1949). The denial of a reasonable opportunity to obtain counsel and to confer with him prior to trial is a denial of due process as contemplated by both the Florida and United States Constitutions, see Cash v Culver, 120 So.2d 590 (1960).

Directors, Officers and Attorneys.

6. Mr. Calvo specified at the Final Hearing that Mr. Chamberlin was essential to the cross examination of Bremer.[15] Had Mr. Chamberlin been permitted to act as counsel to Mr. Calvo, he would have, on cross examination of Mr. Bremer, introduced the affidavits filed by Mr. Bremer in the injunction action against Mr. Calvo.[16] Bremer provided the Securities and Exchange Commission with three separate affidavits for use in the Warehouse litigation; however, the Securities and Exchange Commission withheld the first affidavit provided by Bremer because it authenticated the Bremer tapes which the Securities and Exchange Commission wanted to exclude from consideration in conjunction with its motion for summary judgment.[17] The

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15. See pages 7 and 8 of the record of the Final Hearing, copies of which are included in the appendix filed by Mr. Calvo with his reply brief, and are also included as part of exhibit 1-A to the Denied Motion for Rehearing.

16. With which Mr. Chamberlin, but not Mr. Houston, was totally familiar.

affidavits were included in the joint appendix filed by Mr. Calvo with the United States Court of Appeals for the Second Circuit in *Securities and Exchange Commission v Calvo*, 891 F.2d 457 (2d Cir. 1989), at pages A486 through A491 (the "Third Bremer Affidavit"), A685 through A713 (the "First Bremer Affidavit") and A714 through A727 (the "Second Bremer Affidavit").

7. Excerpts from such joint appendix are included as composite exhibit 1-B to the Denied Motion for Rehearing, a copy of which has been filed in support of this Petition. A review of such excerpts demonstrates material differences between them and between them and the testimony of Bremer at the Final Hearing. For illustrative purposes:

   (a) Paragraph 6 of the Second Bremer Affidavit and Paragraph 16 of the First Bremer Affidavit admit that Mr. Calvo was only involved

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17. As did Bar Counsel in the Florida Bar Case. Those are the same transcripts that the Securities and Exchange Commission was supposed to deliver through Bar Counsel for the hearing, at the instruction of the referee to Bar Counsel, but failed to provide.

with post effective amendment number one to the Warehouse registration statement.[18]

(b) Paragraph 16 of the First Bremer Affidavit admits that Mr. Calvo was never counsel to Warehouse.[19]

(c) Paragraphs 24 and 25 of the First Bremer Affidavit authenticate the Bremer Tapes.

(d) Paragraphs 32, 33 and 34 of the First Bremer Affidavit and paragraphs 15 and 16 of the Second Bremer Affidavit concerning knowledge of the correct closing date were totally contradicted by Bremer's testimony at the Final Hearing where he first claimed no one knew about the erroneous closing date, and then, when cross examined as to his discussion of the proper closing date with

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18. There were three subsequent post effective amendments filed with which Mr. Calvo was not involved. The last such post effective amendment was the one declared effective.

19. The Florida Supreme Court found, without support in the record other than the erroneous testimony of the Florida Bar's expert (see Securities and Exchange Commission rules 436(e) and 478), that Mr. Calvo represented all of the parties.

Manuel Crespo of the Securities and Exchange Commission (and shown his taped transcript of the call), changed his story to indicate that Francesca Daniels had calculated the proper closing date in Mr. Calvo's presence. See the affidavit of Ms. Daniels denying Mr. Bremer's claim filed with the Florida Supreme Court as part of the appendix to Mr. Calvo's reply brief.

(e) Paragraphs 38 through 42 of the First Bremer Affidavit and paragraphs 21 and 22 of the Second Bremer Affidavit discuss Mr. Calvo's purported role in assisting Bremer to raise emergency loan funds through Messrs. Jordan and Burckhardt and Ms. Daniels, starting in January of 1985, indicating that Mr. Calvo had suggested such loans.[20] At the Final Hearing, Bremer admitted that Messrs. Jordan and Burckhardt and Ms. Daniels had been intro-

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20. Such claims were denied by Messrs. Jordan and Burckhardt and Ms. Daniels in affidavits filed in the Injunction Action.

duced solely in conjunction with solicitation of legitimate broker dealer participants in the offering (as contrasted with his claims in paragraphs 40 and 42 of the First Bremer Affidavit), and further, that Bremer conceived of the loan plan himself, and, never discussed it with Mr. Calvo, rather, he claimed that his attorney, Granai explained the proposed Bremer stock purchases to Mr. Calvo on April 19, 1985.[21]

(f) In paragraph 55 of the First Bremer Affidavit and paragraph 29 of the Second Bremer Affidavit, Bremer discusses the Rolands lunch with no mention of Paul C. Jenkins having been introduced by Mr. Calvo as a potential lender. He also admits that Mr. Calvo was accompanied by Nina Gordon, an attorney

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21. Excerpts from the testimony of Mr. Granai to the Securities and Exchange Commission read into the record of the Florida Bar Case make it clear that the scenario described by Mr. Granai to Mr. Calvo differed drastically from that described by Bremer, see Mr. Calvo's brief to the Florida Supreme Court filed in support of this Petition.

employed by Mr. Calvo.

(g) In paragraph 32 of the Second Bremer Affidavit, Bremer claims that he met with Mr. Calvo during the afternoon of April 19, 1985, after lunch, however, at the Final Hearing he admitted that Mr. Calvo had to leave lunch early because of appointments, and that he did not see Mr. Calvo again until running into him at Shooters. No such meeting was reflected in the First Bremer Affidavit.

(h) In paragraph 31 of the Second Bremer Affidavit, Bremer admits that Richmond contacted the escrow agent directly on Friday, April 19, 1985, to confirm his receipt of funds from escrow, three days prior to delivery of Mr. Calvo's letter of disbursal instructions.

(i) In paragraph 46 of the First Bremer Affidavit, Bremer discusses the incident with Kolonosky at the closing, which he could not recall at the Final Hearing.[22]

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22. That incident's sole purpose was to make Mr. Calvo believe

(j) In paragraph 51 of the First Bremer Affidavit, Bremer admits that he and Granai flew to Florida on April 18, 1985, rather than earlier as testified to at the Final Hearing. In that paragraph he also admitted that there was a discussion of meeting use of proceeds requirements at an April 19, 1985 meeting in Mr. Calvo's offices (although he, unlike Mr. Calvo, Granai and Gallagher, claimed such discussion was for deception purposes),[23] a discussion he flatly denied at the Final Hearing.

(k) In both the First Bremer Affidavit and the Second Bremer Affidavit, Bremer on several occasions reflects meetings with Beer,[24] who

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that the Warehouse offering was oversubscribed, and thus not to question the Bremer stock purchase. Had the Kolonosky stock purchase been accepted, then, as far as Mr. Calvo knew, the minimum offering would have been exceeded excluding Bremer's stock purchase.

23. Since the story appears to have been told only to Messrs. Calvo and Gallagher, they had to have been the targets of that deception.

24. The attorney who as of the September 24, 1984 retainer letter with Bremer, replaced Mr. Calvo's firm in the Warehouse offering. An investigation of the Warehouse matter examining correspondence from the Beer firm to the National Association of Securities Dealers, Inc., and Securities and Exchange Commission, on behalf of the un-

he claimed acted as "blue sky counsel" in the Warehouse offering. The Bremer tapes disclose that Beers' partner Wilkes was informed by Granai in early May of 1985 that the offering closed short, however, in paragraphs 75 and 76 of the First Bremer Affidavit, Bremer claims that Beer was shocked to discover such fact during a June 13, 1985 meeting, immediately after which he retained attorney Kaplan and, together with Beer, contacted the Justice Department and Securities and Exchange Commission.

(l) In paragraph 79 of the First Bremer Affidavit, Bremer claims that Mr. Calvo was told about his indictment but was unconcerned (he also testified to that effect at the Final Hearing);[25] *however, in paragraph 47 of the Second Bremer*

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derwriter, would make his role obvious.

25. That was clearly the conclusion of the Florida Supreme Court in the Florida Bar Case.

Affidavit, Bremer swore that Mr. Calvo "had expressed the opinion that a post effective amendment should be filed disclosing my [Bremer's] indictment, and that I [Bremer] should resign from Warehouse." Furthermore, in paragraph 48 of the Second Bremer Affidavit, Bremer admits that he agreed to resign.

8. Such drastic differences as to material facts make it clear that Bremer lied on numerous occasions, and that when considered with the consistency of Mr. Calvo's testimony and the prior testimony of the Gallaghers and Granai, and, the affidavits of Messrs. Jordan, Burckhardt, Jenkins, Baldrica, Scherer and, on two occasions, Ms. Daniels, Mr. Calvo's version of the events is the most credible.[26]

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26. If Mr. Calvo had been a participant in the Bremer conspiracy, he certainly would not have objected to the exclusion of the Bremer indictment from Granai's opinion, or, as testified to by the Florida Bar's witness, Caruncho, suggested that Bremer provide a certification that it had been dropped; he would not have differentiated the treatment of Richmond (as opposed to the other lenders) in the disbursal instructions; he would not have suggested the Granai trust arrangement, or thereafter, written to Granai asking that the promised documents be provided to Gallagher so that Granai could disburse the of-

It also makes it clear that Bremer's testimony at the prior Warehouse proceedings was unreliable, casting significant and material doubts on the results thereof and on the conclusions based thereon.

9. *Most important of all in the Florida Bar Case, in paragraph 52 of the First Bremer Affidavit, Bremer flatly admits*[27] *that Mr. Calvo believed that the purchase of stock by Bremer (as explained to Mr. Calvo) was unequivocably legal.*

10. Mr. Calvo has a right to due process guaranteed by the Fourteenth, Sixth and Fifth Amendments to the United States Constitution, and by Sections Two, Nine and Sixteen of Article One of the Florida

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fering proceeds held in trust; or, he would not have advised Gallagher that Gallagher could not sell out the huge Bremer stock position, except in reliance on the dribble out provisions of Securities and Exchange Commission Rule 144.

27. Confirming the assertions in the Granai deposition that Mr. Calvo was certain that the Bremer stock purchase was legal, and, confirming Bremer's testimony at the Final Hearing that, at the closing, Mr. Calvo did not believe that anything improper was being undertaken. Consequently, at most, the Florida Supreme Court should have found that Mr. Calvo misunderstood or mis-analyzed the Bremer proposal, as described to him by Granai.

Constitution, which included the right to representation by counsel, in the Florida Bar Case. That right was violated,[28] and consequently such proceedings should either be considered a nullity, or a hearing granted at which Mr. Chamberlin is permitted to participate.[29]

III. Unconstitutionality of DR1-102(A)(6)

1. The disciplinary rule on which the Florida Bar Case was based is unconstitutionally vague in violation of due process guarantees of both the Constitution of the State of Florida and the United States. The due

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28. Mr. Calvo was also not represented by counsel at the grievance committee hearing because the Florida Bar refused to grant a short continuance permitting attendance by his attorney. The only continuance in the Florida Bar Case granted to Mr. Calvo was during the pendency of his successful appeal of the referee's decision limiting issues at trial. All of Mr. Calvo's other requests for postponements, even in the interests of clients facing federal criminal proceedings were rejected, while postponements to meet the Florida Bar's vacation schedule were liberally granted.

29. The right under the Florida Constitution to assistance of counsel cannot be rendered illusory or ineffective by a trial court's rulings, see Myles v State, 602 So.2d 1278 (1992). The case of Traylor v State, 596 So.2d 957 makes it clear that the evidence presented at the Final Hearing in violation of Mr. Calvo's right to representation by counsel is not competent evidence, and cannot be used to justify the Florida Supreme Court's decision in the Florida Bar Case.

process protections of both the Florida and United States Constitutions require that statutes or rules that govern conduct "be sufficiently explicit to inform those who are subject to them what conduct on their part will render them liable to its penalties, and be couched in such terms that are not so vague that men of common intelligence must necessarily guess at their meaning and differ as to their application.[30] Such statutes, in a legal setting, lend themselves "to selective enforcement against unpopular causes," see **NAACP v Button**, 371 U.S. 415 (1963).[31]

2. DR1-102(A)(6)[32] provides as follows: "A lawyer

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30. See **Baggett v Bullitt**, 377 U.S. 360 (1964); **Keyishian v Board of Regents**, 385 U.S. 589 (1967); **Watkins v United States**, 354 U.S. 178 (1957); **Lovell v City of Griffin**, 303 U.S. 444 (19__); **Thornhill V Alabama**, 310 U.S. 88 (1940); **Talley v California**, 362 U.S. 60 (1960); **Edwards v South Carolina**, 372 U.S. 229 (1963); **Cox v Louisiana**, 379 U.S. 536 (1965); and, **Brown v Louisiana**, 383 U.S. 131 (1966).

31. See also **Southeast Aluminum Supply Corp. v Metropolitan Dade County**, 533 So.2d 777 (3rd DCA 1988).

32. DR1-102(A)(6) was not included in the revised rules governing the Florida Bar promulgated in 1987. However, the Florida Supreme Court refused to follow its prior rulings to the effect that repeal without a savings clause or substantial re-enactment of a rule regulating conduct renders it inapplicable, even in then pending cases. See

shall not "[e]ngage in any other conduct that adversely reflects on his fitness to practice law." The phrase "any other" makes it clear that the proscribed conduct is something other than that defined in the other five subsections of DR1-102(A), but provides utterly no guidance as to what such conduct might be. Its catch all nature is sufficient to permit the Florida Bar to disbar any attorney it or its cronies find objectionable, on virtually any grounds they can imagine. It is therefore constitutionally deficient and the Florida Bar's prosecution of the Respondent thereunder may not be permitted. See **Webb v Department of Professional Regulation, Board of Professional Engineers**, 595 So.2d 1103 (5th DCA 1992); and, **Delk v Department of Professional Regulation**, 595 So.2d 966 (5th DCA 1992).[33]

Fort v Fort, 104 So.2d 69 (DCA 1, 1958); Gevant v Florida Real Estate Comm., 166 So.2d 230 (Fla., 1964); Pensacola & A.R. Co. v State, 1903, 45 Fla. 86; 33 So. 985, 986; and, State ex rel. Arnold v Revels, 109 So.2d 1 (Fla., 1959). Such refusal deprived Mr. Calvo of his rights to due process and equal protection guaranteed by the constitutions of the United States and the State of Florida.

IV. Improper Introduction of Decisions Based on Lower Standards of Proof

1. The decision in the Florida Bar Case was based almost entirely on the judgments of the District Court and Securities and Exchange Commission judge in the Prior Warehouse Cases.

2. The judgments were introduced at the hearing as evidence over the Respondent's objections, despite the fact that the standard of proof in the Prior Warehouses Cases (a preponderance of the evidence) was less than the standard of proof in the Florida Bar Case (clear and convincing evidence).

3. The Florida Supreme Court, contrary to its prior decisions on point[34] and decisions throughout the federal court system, held that their admission was appropriate and the different standards of proof af-

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33. See also **D'Alemberte v Anderson**, 349 So.2d 164 (1977); and, **State v Wershow**, 343 So.2d 605 (1977).

34. See Lawton v State, 13 So.2d 211 (1943), The Florida Bar v Price, 478 So.2d 812 (Fla. 1985).

fected only the weight of the evidence.

V. Constitutionally Prohibited Ex Post Facto Regulation

1. The Florida Supreme Court's decision amounts to the promulgation of constitutionally impermissible *ex post facto* standards governing professional conduct.

2. The Florida Supreme Court decision was based on an interpretation of securities laws totally contrary to that reflected in the Securities and Exchange Commission's own regulations, as well as in materials promulgated by the Florida Bar. The Florida Supreme Court determined that the expert witness' testimony introduced by the Florida Bar was proper and accurate concerning the Respondent's status as legal counsel to the "parties"[35] and as to the role of legal counsel as an

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35. Despite the fact that Bremer has consistently admitted that the Respondent did not represent Warehouse, and that no testimony was introduced by either the underwriter or the Respondent admitting that at the times in question, the Respondent represented the underwriter. Indeed, that factual conclusion flies in the face of the retainer letter entered into by the Beer firm replacing Mr. Calvo's firm, on September 24, 1984, which was introduced at the Final Hearing. See excerpts

"expert" in conjunction with liabilities and responsibilities for preparation and amendment of registration statements filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended.

3. In this regard, the Florida Supreme Court must have rejected the materials from other jurisdictions introduced by the Respondent to prove the contrary point, as well as Securities and Exchange Commission Rules 436(e)[36] and 478.[37]

4. While Florida is free to create its own standards for the conduct of its attorneys, whether or not in agreement with the standards of the Securities and Exchange Commission, the federal courts or other

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from Bremer affidavits discussed in the Denied Motion for Rehearing, and discussions of the replacement as counsel in Mr. Calvo's brief and reply brief, all filed in support of this Petition.

36. Specifying that counsel to the underwriter was not included in the class of experts, and therefore not required to file a consent to the use of its name in a registration.

37. Specifying who could amend a registration statement, *i.e.*, only those who had signed it or filed consents to the use of their names therein.

states, the Florida Bar had itself indicated to the legal community in the State of Florida[38] that in the preparation of registration statements, attorneys were not to be deemed experts,[39] thus the Florida Supreme Court's change of interpretation involves the promulgation of constitutionally prohibited *ex post facto* regulation of professional conduct.

VI. Violation of Right to Equal Protection

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38. In light of the mandatory education requirements imposed by the Florida Supreme Court and the fact that such information was provided by the Florida Bar at one of the seminars presented in conjunction therewith, it is manifestly unfair and a violation of due process to disbar an attorney for relying on the information so provided.

39. See the lecture outline for the Florida Bar's 1987 continuing legal education program entitled *Responsibilities and Liabilities of Corporate Directors, Officers and Attorneys*, at pages 5.9, 5.10, 7.18, 7.19, 7.20, 7.21, 7.24, 7.25, 7.35, 7.36, 7.37, 7.38, 7.39., 7.42, 7.44, 7.55 and 7.46. This Court is asked to note that there is a very large difference in responsibility reflected, based on whether or not the lawyer was issuing written opinions to be shown to third parties, but that even in such cases, the attorneys' liability was not deemed to be as described by the Florida Bar's expert, whose testimony was totally at odds with that presented by the Florida Bar in this seminar and publication! It is further asked to remember that, in the Gallagher Case, legal counsel to the Securities and Exchange Commission unequivocably stated that Mr. Calvo had provided neither oral nor written opinions in conjunction with the Warehouse closing.

The decision in the Florida Bar Case violates the Respondent's right to equal protection guaranteed by the constitutions of the United States and Florida in a number of ways, including assessment of costs,[40] failure to abide by decisions of the Florida Supreme Court setting the standards for Florida Bar disciplinary proceedings and imposition of disproportionate discipline on minority attorneys. The violation of equal protection involves, among other aspects, the fact that the Respondent's Colombian ancestry was made a finding of fact by the

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40. The Florida Supreme Court assessed all of the Florida Bar's costs against the Respondent, despite the fact that: (i) The Florida Bar's initial strategy of limiting issues at trial had been reversed by the Florida Supreme Court the previous year; (ii) The Florida Bar had been forced to drop a majority of the counts in its complaint against the Respondent when it found that they had not, in fact, ever been authorized, and would have violated the Respondent's constitutional rights to due process; (iii) The testimony of Bremer at the Final Hearing was neither credible nor supportive of essential aspects of the Florida Bar's allegations, and, as in the case of Richmond, could have been presented without a personal appearance; and (iv) The Florida Supreme Court's decisions on factual issues appear to be based almost exclusively on the final decisions in the prior injunctive action and 2e proceeding. The Florida Supreme Court established the factors for assessment of costs in a case cited by the Florida Bar itself, The Florida Bar v McCain, 361 So.2d 700, 705 (Fla. 1978). Such factors should have led to a determination that, even if the Florida Bar was successful in its case, each party should have borne its own costs. To decide otherwise violates the guarantees of equal protection contained in the Florida and United States Constitutions.

referee and was followed by prejudicial citation to irrelevant decisions by Florida Bar counsel, involving attorneys engaged in the narcotics trade.

VII. Due Process Violations Involving Discovery, Mandatory Judicial Notice, Exclusion of Improper Evidence and Introduction of Relevant Evidence

1. The Florida Bar and the Florida Supreme Court are bound by the guarantees of due process and equal protection imposed by the Florida and United States Constitutions.[41] In that regard, Mr. Calvo was entitled, during the conduct of the Florida Bar proceeding, to a meaningful ability to defend himself.[42]

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41. Licenses essential in the pursuit of a livelihood may not be revoked or suspended without procedural due process, see Robinson v Florida Board of Dentistry, Department of Professional Regulation, Division of Professions, 447 So.2d 930 (3rd DCA 1984).

42. See the following cases where the Florida Supreme Court found guarantees that should be applied to the Florida Bar Case: The Florida Bar v McCain, 361 So.2d 700, 705 (Fla. 1978); Florida Bar v Randolph, 238 So.2d 635 (1970); Lawton v State, 13 So.2d 211 (1943); The Florida Bar v Price, 478 So.2d 812 (Fla. 1985); Dodd v The Florida Bar, 118 So.2d 17 (Fla. 1960); The Florida Bar v Simmons, 391 So.2d 684 (1980); The Florida Bar v Borja, 609 So.2d 21 (Fla. 1992); and, The Florida Bar v Agar, 394 So.2d 405 (1981).

2. Notwithstanding such rights, Mr. Calvo was deprived of his rights:

   A. To conduct meaningful discovery;[43]

   B. To have matters judicially noted under mandatory judicial notice provisions of Florida law, and to introduce relevant, competent evidence (as a result of the refusal of the referee to take such notice or admit such evidence);[44]

   C. To have inappropriate and prejudicial evidence excluded;[45]

3. The case of Banks v Vickery, 521 F.2d 814, 815

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43. As a result of protective orders granted in favor of the Florida Bar, as a result of the refusal of the Securities and Exchange Commission to provide copies of required materials, and, as a result of the alleged loss by the Florida Bar of years worth of its files, including the materials provided by Mr. Calvo to the Florida Bar in conjunction with its investigation.

44. Among the excluded materials were the proceedings in the Gallagher Case and the report of the American Bar Association and the Association of the Bar of the City of New York dealing with the ethical obligations of attorneys in matters involving securities laws.

45. *E.g.*, the Bremer hearsay testimony, the erroneous testimony of the expert witness and the final judgments in the Prior Warehouse Actions which involved lower standards of proof.

(1975), deals with constitutional challenges to the Georgia Bar exam by a class comprised of black applicants. While the plaintiff's did not succeed in their case, the court specifically found that states may not conserve or allocate a right to practice law;[46] and, that states cannot restrict practice of law in violation of rights to due process under federal and state constitutions.[47]

4. In **Davis v United States**, 415 F.Supp 1086 (1976), the court held that constitutional deficiencies in the administrative fact finding process "fatally infected" the integrity of the administrative findings.[48]

5. In **Holman v Washington**, 364 F.2d 618 (1967), the court dealt with the use of prior evidence without a proper foundation. The court held that such use was a deprivation of due process under the 5th and 14th amendments to the federal constitution, as

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46. By analogy, it may not deprive minorities of the right to practice law by prejudicial enforcement of ethical rules.

47. At 1103.

48. The case specifically deals with attorneys, at pages 1091, 1092!

well as under the applicable state constitution. It indicated that a predicate to use of such indirect evidence was that the prosecution have used diligent efforts to obtain the direct testimony of witnesses. *As applied in the Florida Bar Case, such holding would prohibit the consideration of Bremer's testimony as to the statements made by Granai concerning Mr. Calvo's statements as to Messrs. Jenkins, Baldrica and Scherer, and Bremer's statements concerning the calculations made in Mr. Calvo's presence by Ms. Daniels, all of which have been subsequently denied in sworn affidavits.*[49]

6. In **Harrell v Tobriner**, 279 F.Supp 22 (USDC D.C., 1967), the court made it clear that the practice of law is a right,[50] rather than a privilege and that states could not restrict constitutionally guaranteed rights for mere administrative convenience. The

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49. It would also prohibit the testimony of the Florida Bar's purported expert.

50. That is clearly the case under Section One, Article Two of the Florida Constitution, see **State ex rel. Sbordy v Rowlett**, 190 So.2d 59 (1939).

case of Mooney v Holohan, 55 S.Ct. 340, 294 U.S. 103, 79 L.Ed 791, (1935), involved a petition by an incarcerated person challenging the constitutionality of a conviction based on the use of perjured testimony by state officials.[51] The court determined that such conduct, if accurate, deprived the petitioner of his constitutional rights to due process.

7. The Florida Bar has asserted that the practice of law is a privilege and not a right. That attitude is reflected in the manner in which the Florida Bar conducted the Florida Bar proceeding. Clearly, under federal constitutional law, that is not the case and Mr. Calvo was entitled not to a mere hearing, but to all of the rights constitutionally guaranteed in conjunction therewith. Such rights include the right to appropriate enforcement of discovery rights,[52] to

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51. It agrees with the holdings in Dodd v The Florida Bar, 118 So.2d 17 (Fla. 1960); The Florida Bar v Agar, 394 So.2d 405 (1981), cited by the Florida Bar for other reasons!

52. The referee refused to grant Mr. Calvo the right to propound more that 30 interrogatories to the Florida Bar, despite having been informed that because he lacked funds, the only discovery available to

timely notice of accusations against him, to a timely hearing of charges against him, to access to mandatory judicial notice as provided by statute, to introduction of relevant evidence on his behalf, and to exclusion of non-competent evidence (especially where competent evidence was readily available). Just as clearly, Mr. Calvo was not provided a hearing that met such requirements.

Mr. Calvo was through interrogatories, requests for admission and requests for production of documents. Instead, the referee granted protective orders pursuant to which the Florida Bar had to respond to only five of the interrogatories propounded. A review of such responses, as well as to the response to Mr. Calvo's request for admissions makes it clear that the Florida Bar refused to provide meaningful discovery. Instead it ignored large bodies of irrefutable evidence contradicting its position, and successfully objected to its introduction at the hearing (*e.g.*, the Gallagher Case).

In addition to the formal restrictions imposed by the referee on the conduct of discovery by Mr. Calvo, he was deprived of access to most of his own records. He provided most of them to the Florida Bar during 1988 and such records were never returned. During 1990, in response to an inquiry from Mr. Calvo, the Florida Bar notified him that he was in good standing, as a result of which, he resumed his Florida practice in January of 1991, leaving all remaining Warehouse materials in North Carolina, where they were eventually discarded. At the time the Florida Bar proceeding was initiated in August of 1991, he had virtually no Warehouse materials left, and neither the Securities and Exchange Commission, nor the Florida Bar were willing to assist in reconstructing such evidence. Most shockingly, at the final hearing, legal counsel to the Florida Bar admitted that several years worth of its files in the Florida Bar Case had disappeared.

8. The ability of a person to obtain a fair hearing is more difficult in an administrative setting, where the agency acts as prosecutor, judge and appellate body. In such cases, the agency must carefully monitor its agents to assure that they fully give due respect to the appropriate constitutional guarantees.[53] The Supreme Court failed to do that in the Florida Bar Case and such failure deprived Mr. Calvo of his rights to due process guaranteed by the constitutions of the United States and the State of Florida.

VIII. Unconstitutionally Nature of Discipline Imposed

1. The eighth amendment to the United States Constitution, as applied to the states by the 14th and fifth amendments, and Section Seventeen of Article One of the Florida Constitution, prohibit the imposition of unusual, cruel or inhuman punishment. Under the facts of the Florida Bar Case, when con-

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53. A recent newspaper article reported the formation of a rival bar association because of perceived corruption and cronyism in the Florida Bar.

sidered with the intervening punishment to which Mr. Calvo and his family have been subjected and the procedural irregularities associated with these proceedings, the disbarrment of Mr. Calvo is an impermissibly cruel and unusual punishment. The proper tests for imposition of discipline were reflected in the case of **The Florida Bar v Neu**, 597 So.2d 266 (Fla. 1992), cited by the Florida Bar.

2. The Neu case involved commingling of funds, and, the Florida Bar's appeal of decisions by the referee to the effect that the Florida Bar failed to prove, by clear and convincing evidence, that the attorney's conduct constituted dishonesty, misrepresentation, deceit or fraud. The case has no support for any of the Florida Bar's contentions; however, as in the case of most, if not all the cases cited by the Florida Bar, it does support the propositions which Mr. Calvo requested the Florida Supreme Court to espouse, namely, that in order to prove a violation of DR 1-102(A)(6), the Florida Bar had to establish the element of intent by clear and convincing

evidence and that discipline in the Florida Bar Case would not serve the three purpose test referred to in that case.

3. At the final hearing, no evidence was introduced to indicate that Mr. Calvo intended to deceive anyone; rather, Bremer, the Florida Bar's chief witness, testified that there was no intent by anyone to engage in unlawful activities with reference to the Warehouse closing, thus, the referee's findings of fact concerning issues of Mr. Calvo's purported dishonesty, fraud, deceit or misrepresentation were clearly erroneous and not supported by clear and convincing evidence.[54]

4. With reference to discipline, the Florida Supreme Court held that it had to meet three tests:

   A. First, the discipline had to be fair to society, both in terms of protecting the public from

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54. The fact that Mr. Calvo believed that the Bremer stock purchase, as described to him by Granai, was legal is buttressed by the Bremer affidavits, relevant portions of which are included as exhibits to the Denied Motion for Rehearing, a copy of which has been filed in support of this Petition.

unethical conduct, *and, at the same time, not denying the public services of a qualified lawyer.* In that regard, Mr. Calvo is subject to a standing injunction against violating securities laws and has served a two year suspension from practice before the Securities and Exchange Commission. That two year suspension, was, in fact, due to the nature of Mr. Calvo's practice, served as a two year suspension in the practice of law, with all the financial and emotional hardships to him and his family that it entailed. Furthermore, Mr. Calvo is, to the best of his knowledge, the only hispanic or securities attorney in his geographic location. A great deal of his practice involving his hispanic clientele is either *pro bono*, or at greatly reduced rates, subsidized by his largely out of state corporate clientele. While the Florida Bar has been bemoaning the inadequate representation of minorities in the legal profession, it is difficult to justify its pos-

ture in the Florida Bar Case. Indeed, references to Mr. Calvo's Colombian heritage were not placed in the record by the Florida Bar for his benefit, or for the benefit of Florida's large hispanic population.

B. Second, the punishment must be fair to Mr. Calvo, being sufficient to punish a breach of ethics and at the same time encouraging rehabilitation. Fairness is not served by multiple punishment for the same offense, especially in light of the Florida Bar's un-excused delays in bringing the Florida Bar Case and its myriad procedural deficiencies in the conduct of the Florida Bar Case. Obviously, the discipline recommended has no thought for rehabilitation.

C. Third, the judgment should be severe enough to deter others. In point of fact, when considered with the results of the injunction and 2e sanctions, no further discouragement is required.

IX. Defacto Double Jeopardy

1. Article One, Section Nine of the Florida Constitution prohibits double jeopardy, at least as strongly as the United States Constitution, see **Wright v State**, 586 So.2d 1024 (1991).

2. While normally double jeopardy does not apply to actions by different sovereigns, it would apply where the subsequent action was initiated at the instigation of the other jurisdiction. In the instant case, the missing Bar files would clearly establish that the Florida Bar Case was initiated at the request of the Securities and Exchange Commission, and that its goal was to accomplish what the Securities and Exchange Commission's own judge had declined to do, permanently bar Mr. Calvo.

3. Mr. Calvo has been twice tried and punished for the offenses again charged in the Florida Bar Case. The results of the Florida Supreme Court's current decision has put Mr. Calvo thrice in jeopardy. Double jeopardy exists when the event involves a completely new beginning and the second preceding

takes place before a new trier of fact, see **R.M. v State**, 603 So.2d 64 (3rd DCA 1992); **Williams v State**, 601 So.2d 1253 (5th DCA 1992); and, **Polakoff v State**, 586 So.2d 385 (5th DCA 1991). Thus renewal of punishment for offenses already served was not appropriate.

C. LACHES, WAIVER & ESTOPPEL

I. Introduction

1. The Florida Supreme Court failed to consider the multi-year lapse by the Florida Bar in filing the complaint in the Florida Bar Case after authorization therefor by the grievance committee, and the intervening notification to Mr. Calvo that he was, in fact, in good standing as a member of the Florida Bar, as a result of which Mr. Calvo and his family made drastic changes in their lives, at a cost of more than $400,000 in lost investments in out of state businesses.

2. Were it not for such notification and had Mr. Calvo been told that the grievance committee had recommended that he be disbarred,[55] he would not have

moved back to Florida and resumed his practice of law in Florida; rather, he would either have assumed an active role in the management of his family investments in North Carolina, or, returned to practice law in the State of New York.

3. The consequences of unjustified delays in Bar proceedings was addressed by the Florida Supreme Court definitively in the cases of **Florida Bar v Randolph**, 238 So.2d 635 (1970); and, **The Florida Bar v McCain**, 361 So.2d 700, 705 (Fla. 1978).[56]

Ii. The Randolph Case

The Randolph Case involved allegations that an attorney had misappropriated trust assets for his own benefit. The process was initiated in August of 1963, when a complaint was filed with a grievance committee

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55. He first learned of that recommendation during the Florida Bar's closing argument at the Final Hearing .

56. The refusal of the Florida Supreme Court to follow the standards it set in such cases in the Florida Bar Case deprived Mr. Calvo of his right to equal protection guaranteed by the Florida and United States Constitutions.

by interested parties. The transgressions were alleged to have been committed during a four year period starting in 1958 and ending during 1961. The Florida Supreme Court agreed with the findings of the referee that the attorney under prosecution's conduct was grossly irresponsible and almost willfully abusive.

1. A chronology of the case is presented at page 637 thereof and demonstrates that a period of approximately three years passed between the time a client complaint was filed with the grievance committee and the time a complaint initiating the action was filed. There is no indication that the complaint filed was, as in the Florida Bar Case, procedurally deficient (*i.e.*, the complaint in the Florida Bar Case was unsigned and contained a number of unauthorized counts which were subsequently voluntarily dismissed). The proceedings then took an initial three years until completion through the action of the Board of Governors. The aggregate period involved was approximately six years.

2. For purposes of comparison:

A. The Florida Bar Case appears to have been initiated during 1987[57] and resulted in a recommendation for prosecution by the grievance committee in 1989, however, inexplicably, Mr. Calvo was never notified of such determination. Whereas in the Randolph Case a complaint was properly prepared and filed in less than three months, the complaint in the Florida Bar Case was never properly prepared and was filed three years later.

B. During the interim, Mr. Calvo was suspended from practice before the Securities and Exchange Commission for a period of two years, a suspension which was completed during 1990. During such period Mr. Calvo ceased all legal activities in Florida and resided with his wife in North Carolina. After completion of the Securities and Exchange Commission suspension Mr. Calvo contacted the Florida

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57. Based on actions that took place on April 19, 1985 and April 22, 1985.

Bar concerning his status therewith and was provided with a certification of good standing, whereupon, Mr. Calvo and his family moved back to Florida and he restarted his legal practice. The move back to Florida eventually resulted in approximately $400,000 in losses in an investment in a hotel, partially as a result of extremely negative materials provided to a former employee by either the Florida Bar or the Securities and Exchange Commission.

C. In August of 1991, Mr. Calvo agreed to assist parties to the Warehouse related series of actions in their defense against Securities and Exchange Commission proceedings[58] and almost immediately thereafter, the Florida Bar filed its complaint against Mr. Calvo in the Florida Bar Case.[59]

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58. The Gallagher Case decided by the United States Court of Appeals for the 11th Circuit in May of 1992.

59. As a result of which Mr. Calvo's meaningful participation in such case was rendered impossible.

D. As a result of the Florida Bar's pursuit of a legal theory subsequently rejected by the Florida Supreme Court, a final hearing in the Florida Bar Case did not occur until September of 1992, and the referee entered his decision granting all of the disciplinary requests of the Florida Bar in December of 1992.

E. At the final hearing, the Florida Bar's substantive witnesses all indicated difficulty recalling the events in question because of the lapse in time, especially as to questions propounded by the defense.[60] In addition, substantial quantities of documentary evidence could not be provided, despite the Florida Bar's requests to the Securities and Exchange Commission, because the materials were either in storage or had disappeared.[61]

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60. That was also true concerning the Florida Bar's witness as to authentication of the unsigned complaint.

61. None of the original materials provided by Mr. Calvo to the Florida Bar during 1988 in conjunction with the Florida Bar's investigation were ever returned to him, and, the Florida Bar claims that it has lost all of its Warehouse files for 1987 and 1988.

F. In the Randolph Case, bar counsel was an unpaid volunteer, as opposed to the situation in the Florida Bar Case, where the prosecution was conducted by three attorneys employed on a full time basis by the Florida Bar. Thus, the Florida Supreme Court was careful not to be too critical. Furthermore, the Florida Supreme Court specifically found that once the final participants were in place, the matter was handled in a competent and professional manner. That certainly was not the case presented here. Furthermore, unlike the Florida Bar Case, the Florida Bar itself had played no role whatsoever in the underlying matter, whereas, in the Florida Bar Case, the Florida Bar refused to grant a continuance in an unrelated matter, as a result of which Mr. Calvo was prevented from even considering assuming a formal role in the Warehouse closing, or even dedicating more time, on an informal basis, to the Warehouse closing.

G. The Florida Supreme Court in the Randolph Case noted that the respondent and his family had been subjected to six years of agony, embarrassment, the stigma of community suspicion and criticism and the awesome professional embarrassment generated by the charges of serious breaches of ethics. In the Florida Bar Case, not only have Mr. Calvo and his family been subjected to similar agony, but he has during the interim served a two year suspension, and massive financial losses, not only from income that he did not derive, but the loss of his family's lifetime savings, at least in part as a result of improper conduct by personnel employed by the Florida Bar.

H. The Florida Supreme Court further noted that significant revisions to Bar procedures had been implemented by 1970 which would "eliminate many of the 'built in' delays previously existing." Quoting Burton Young, then

the Florida Bar president, the Florida Supreme Court noted that, in the future, disciplinary action would be completed within six months. The Florida Bar Case makes it clear that the Florida Supreme Court's observations were, unfortunately, unduly optimistic and gives credence to the current myriad calls for divesting the Florida Bar of authority to regulate the legal profession.

3. At page 639, the Florida Supreme Court, citing The Florida Bar v Wagner, 197 So.2d 823 (Fla. 1967), states as follows: *"We have pointedly held that the responsibility for exercising diligence in the prosecution rests with the Bar. When it fails in this regard the penalizing incidents which the accused lawyer suffers from unjust delays, might well supplant more formal judgment as a form of discipline. That is so even though the record shows that the conduct of the lawyer merits discipline."*

4. It is submitted that, in the Florida Bar Case, the Florida Bar's conduct was significantly more inap-

propriate than that reflected in the Randolph Case, that the suffering and defacto and *de jure* penalties which Mr. Calvo and his family have been forced to endure have been significantly greater than those reflected in the Randolph Case, and that the evidence of culpable conduct was significantly less reliable. Especially when considered in light of the fact that Mr. Calvo completed discipline imposed by the Securities and Exchange Commission in conjunction with the facts involved in the Florida Bar Case more than three years ago, and that under applicable law, the incident is no longer even a disclosure item for federal securities law purposes, this Court is asked to to reject the conclusion of the Florida Supreme Court and instead, to determine that no further discipline of any kind is now warranted.

III. The McCain Case

The McCain Case involved the disbarrment of a former justice of the Supreme Court of Florida for improprieties engaged in while on the bench.[62] The action

by the Florida Bar was initiated immediately after the judge left the bench, which was three years after the acts which formed the basis for discipline.

1. The case was cited by the Florida Bar to support its contention that its un-excused and unexplained delays in initiating and prosecuting the Florida Bar Case ought to be ignored. The case does not support the Florida Bar's contention; however, its numerous legal conclusions clearly apply to the Florida Bar Case and are completely supportive of numerous elements of Mr. Calvo's petition for review. They involve the circumstances that warrant dismissal of Bar related actions involving unjustified delays, laches and estoppel; the nature of the evidence required to support a referee's findings of fact (*e.g.*, the inadequacy of hearsay

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62. The fact that the respondent in the McCain Case was a former member of the Florida Supreme Court should not be a factor justifying different analysis of the applicable factors. That the Florida Supreme Court did so violated Mr. Calvo's rights to equal protection and due process as guaranteed by the constitutions of the United States and the State of Florida.

evidence, and, the requirement that the referee's findings of fact be supported by clear and convincing evidence); that a referee's findings of fact will be overturned if they are clearly erroneous, or (*disjunctive*) if they are lacking in clear and convincing evidentiary support); the impropriety of willful and intentional tampering by members of the judiciary or its agencies with pending cases; the impropriety of assessing costs against a respondent where the Florida Bar took an overbroad approach in the action which resulted in dismissal, voluntary or otherwise, of numerous counts included in the original complaint; and, the duty of the Supreme Court to impose appropriate sanctions against the Florida Bar and its agents for acting irresponsibly. They also refer inconclusively to the issue of provision of notice that formal charges have been filed.

2. Such conclusions bear detailed discussion:

A. *Unjustified Delays:*

The Florida Supreme Court found that, while no hard and fast statute of limitations applied to Bar disciplinary actions, "*[l]awyers' rights may be protected without a mechanical and automatic rule setting forth limitations for actions involving misconduct.*" The court indicated that it would "*consider any unexplained, unreasonable delay in presenting the charges, and also, whether by reason of such delay, the accused has been deprived of a fair opportunity of securing proof to meet the accusation ....*" Further, the Florida Supreme Court indicated that limitations analogous to statutes of limitations would be appropriate if "*the nature of the circumstances of the particular case*" make it "*unjust or unfair to require the attorney to answer for such occurrence.*"

In the Florida Bar Case, the Florida Bar's delays have not been explained or justified and Bar counsel's objections during cross examination of its witnesses as to the ef-

fect of passage of time on their memories and the unavailability of documents from the Securities and Exchange Commission or the Florida Bar (which lost years worth of files), make it abundantly clear that the delay detrimentally affected Mr. Calvo's ability to conduct his defense. In the Florida Bar Case, the Florida Supreme Court should have, based on the criteria it established in the McCain Case, found the Florida Bar's action was barred as a result of its unreasonable delays. Failure to comply with its own criteria deprived Mr. Calvo of his rights to due process and equal protection guaranteed by the constitutions of the United States and the State of Florida.

B. *Latches*:

The Florida Supreme Court found that four conditions had to be met in order for latches to apply to Bar disciplinary proceedings: (1) Conduct on the part of the defen-

dant, or one under whom he claims, giving rise to the situation of which complaint is raised; (2) delay in asserting the claimant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he based suit; and (4) injury or prejudice to the defendant in the event relief is accorded in the complaint.

All four elements were clearly present in the Florida Bar Case. (1) The subject proceedings were allegedly based on Mr. Calvo's conduct; (2) the Florida Bar, after having been informed of the grievance committee's decision, failed to initiate the action for several years, despite a statutory duty to act promptly, and with full ability to do so; (3) Mr. Calvo was never informed of the

grievance committee decision, and, instead, was, prior to return to Florida and resumption of practice, provided with written certification by the Florida Bar that he was in good standing; and, (4) success by the Florida Bar in securing discipline in the Florida Bar Case destroyed Mr. Calvo's re-commenced practice of law in Florida, Mr. Calvo and his family have been impoverished again, and he has again been subjected to already suffered public humiliation, scorn and ridicule. *Thus, in the Florida Bar Case, the Florida Bar's action should have been barred by the equitable doctrine of laches.* The Florida Supreme Court's failure to abide by its own standards violated Mr. Calvo's rights to due process and equal protection guaranteed by the Constitutions of the United States and the State of Florida.

C. *Estoppel:*

The Florida Supreme Court ruled that in order for the doctrine of estoppel to apply, three essential elements had to be established: (1) Words and admissions, or conduct, acts and acquiescence, or all combined, causing another person to believe in the existence of a certain state of things; (2) in which the person so speaking, admitting, acting or acquiescing did so willfully, culpably or negligently; and (3) by which such other person is or may be induced to act so as to change his own previous position injuriously.

All three elements were clearly established in the Florida Bar Case. (1) The Florida Bar not only failed to notify Mr. Calvo of the grievance committee decision or to promptly file the required complaint, but affirmatively certified that he was in good standing with the Florida Bar; (2) At best, it must be agreed that the Florida Bar's failure to

notify Mr. Calvo of the grievance committee decision or to file its complaint, and its written certification to Mr. Calvo that he was in good standing, where wantonly negligent; and, (3) As a result of the Florida Bar's actions and failures to act, Mr. Calvo and his family moved back from North Carolina to Florida, lost a hotel, restaurant and lounge which Mr. Calvo's wife owned, resulting in the loss of approximately $400,000 in cash invested and three years of uncompensated labor. But for the Florida Bar's actions, Mr. Calvo and his family would either have stayed in North Carolina and continued the hotel, restaurant and lounge business there or Mr. Calvo would have resumed his practice in the State of New York, where he is also admitted. *Thus, in the Florida Bar Case, the Florida Bar's action should have been barred by the equitable doctrine of estoppel.* The Florida Supreme Court's failure to abide by its own standards

violated Mr. Calvo's right to due process and equal protection guaranteed by the constitutions of the United States and the State of Florida.

D. *Evidence required to support findings of fact (e.g. the inadequacy of hearsay evidence and the requirement that findings of fact be supported by clear and convincing evidence); that findings of fact will be overturned if they are clearly erroneous, or (disjunctive) lacking in clear and convincing evidentiary support).*

This Court is asked to note that in the McCain Case the Florida Supreme Court upheld the referee's finding of fact that the hearsay statements of J. Vernon Wright, concerning a conversation he had with Judge D.C. Smith in which Judge Smith related that the defendant wanted improper action taken, was not clear and convincing evidence. In the McCain case, the integrity of Mr. Vernon, and his credibility were beyond question.

In the Florida Bar Case, the referee accepted the testimony of Edward Bremer, to the effect that Gary Granai had told him that Mr. Calvo had told him that Paul C. Jenkins, Robert Baldrica and James Scherer were heavy hitters whom Mr. Calvo would introduce for purposes of making loans to close the offering, and that Francesca Daniels had calculated the proper escrow period in Mr. Calvo's presence, and based thereon, made his findings of fact.[63] Clearly applying the McCain case standards, such findings of fact were unsupported by clear and convincing evidence, but rather by un-persuasive hearsay.[64]

Furthermore, Bremer, unlike Mr.

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63. Those assertions were contradictory to those previously made by Bremer in affidavits prepared for the Securities and Exchange Commission. See the excerpts therefrom included as exhibits to the Denied Motion for Rehearing filed in support of this Petition.

64. See **Holman v Washington**, 364 F.2d 618 (1967), regarding constitutional requirements applicable for introduction of hearsay evidence.

Wright, is a convicted felon and, as exposed by comparing the affidavits[65] he provided to the Securities and Exchange Commission and the Bremer tapes, with his testimony, is utterly incredible, as a matter of law.

The referee also accepted the testimony of the Florida Bar's purported expert, who had no personal knowledge of the facts at issue, almost no experience in small public offerings, and a demonstrated erroneous grasp of the applicable law, and based his findings of fact thereon.

3. *Clearly the McCain case should have led the Florida Supreme Court to reject the referee's findings of fact as clearly erroneous and unsupported by clear and convincing evidence.* The Florida Supreme Court's

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65. Excerpts therefrom are included as exhibits to the Denied Motion for Rehearing, a copy of which has been filed in support of this Petition.

The Denied Motion for Rehearing contains a crucial discussion of the differences, as well as the admissions favorable to Mr. Calvo in such affidavits.

failure to abide by its own standards violated Mr. Calvo's rights to due process and equal protection guaranteed by the Constitutions of the United States and the State of Florida.

4. In **Fuentes v Shevin**, 92 S.Ct. 1983, 407 U.S. 67, 32 L.Ed 2d 556 (1972), the court outlawed the replevin statutes of numerous states, including Florida. Its relevance in the Florida Bar Case is its holding that the constitutional rights to due process require proper notice and a timely hearing. *In the Florida Bar Case, Mr. Calvo was not provided with notice of the filing of a complaint in 1987, the only notice being a 1988 notification that the matter was being referred to a grievance committee; Mr. Calvo was not provided with notice of the decision of the grievance committee during the fall of 1989 until receipt of a complaint in the Florida Bar Case during August of 1991. This despite the internal requirement elucidated by the Florida Supreme Court in the Randolph Case, that disciplinary matters be resolved within six months after initiation of an investigation.* Mr. Calvo was

therefore provided with neither meaningful notice nor a timely hearing.

D. Miscellaneous Matters

I. Attorney Client Privilege

The Florida Supreme Court has based its decision, in part, on a determination that Mr. Calvo's otherwise applicable duty of confidentiality, was superseded because the conduct of the participants in the Warehouse matter was criminal, regardless of whether or not a criminal proceeding was ever initiated. In that regard this Court is respectfully requested to note that Bremer testified that at the closing, there was no intent by anyone to engage in any improper conduct, and that intent is a critical element in the commission of a crime.[66] Thus, not only has a criminal action never been initiated, but the Florida Bar's own witness in chief has testified in a manner making such a determination inappropriate. All other participants in the Warehouse closing who hav

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66. In essence the Florida Bar Case stands for the proposition the attorney client privilege can be ignored if the attorney should have suspected that a client might not be telling th whether or not the attorney, in fact, had such doubts!

been subject to Securities and Exchange Commission proceedings have vigorously denied any wrongful intent. There is utterly no evidence indicating that Mr. Calvo was aware that anyone intended to engage in criminal conduct, and therefore, the Florida Supreme Court's decision should not be followed.[67]

II. Vulnerability of Victims

1. The Florida Supreme Court, addressing the issue of appropriate punishment, found the victims of the Warehouse closing to be especially vulnerable. The fact is that no evidence was introduced at the hearing by any purported victims. Without minimizing the seriousness of the fraud and misconduct perpetrated by Bremer (the Florida Bar's chief witness), the fact is that there were no widows and orphans involved in the Warehouse matter. Inves-

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67. The Florida Supreme Court indicated that Mr. Calvo was obligated to notify investors of a number of facts, however, it ignored the fact that Mr. Calvo could not, on his own, modify the Warehouse registration statement and that Mr. Calvo had no way of knowing who the investors were. Furthermore, the timing involved and the overlapping hearing which the Florida Bar refused to reschedule made any such attempt impossible.

tors in new issues are not vulnerable members of society, rather, securities laws as well as the know your customer rules of the National Association of Securities Dealers, Inc., wisely limit participation in new issues to sophisticated investors with substantial securities experience who, in addition, can afford the loss of their investment, a fact prominently reflected in the risk factor section of the registration statement.

2. In the instant case, a major portion of the non-Bremer investors invested through selected dealers who were licensed securities professionals and who were completely aware that the parties believed April 22, 1985, was the proper closing termination date. The bulk of the subscriptions, in fact, were submitted after April 7, 1985.

3. The Florida Supreme Court concluded that the Warehouse securities were worthless at the time they were issued. There was no support on the record for that conclusion. Rather, the facts demonstrate that from the time of closing until the

termination of trading when the Securities and Exchange Commission launched its actions, the Warehouse securities traded at a premium.[68] To this day, Bremer continues to claim that Warehouse was a legitimate company and presented investors with a reasonable investment opportunity.

4. The Florida Bar and its expert have taken the position that in making Warehouse related decisions, the only interest that should have been considered was protection of the new investors. However, Warehouse was an existing public company, with existing employees, and a large number of existing stockholders.[69] It would have been irresponsible to ignore their rights out of hand, and to have destroyed their company, if, in fact, there was a reasonable possibility that the factual allegations presented by Messrs. Bremer and Granai to Mr.

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68. A small premium, unlike the wild overcharging that later permeated the penny stock market.

69. The Warehouse stockholders prior to the offering unaffiliated with Bremer were no more or no less vulnerable than those who invested during the 1984-1985 public offering.

Gallagher were accurate. In fact, if the factual allegations presented by Messrs. Bremer and Granai to Mr. Gallagher were accurate and Mr. Gallagher had refused to close, then both Warehouse and its existing stockholders may well have had a cause of action against the underwriter for failure to use its best efforts to complete the offering.

III. The Florida Bar's Role

1. Perhaps the most incongruous aspect of the Florida Bar Case is the unrefuted fact that the Florida Bar played a direct role in the Warehouse closing fiasco. On April 22, 1985, the day of the Warehouse closing, the very same office of the Florida Bar that prosecuted the Florida Bar Case, had a date with Mr. Calvo which it refused to break.

2. It is unfortunate that bureaucrats in general and the Florida Bar specifically have become so aggressive in their quest for victory that they disdain the courtesies attorneys normally grant each other. Those courtesies have permitted the efficient functioning of a judicial system where scheduling conflicts are

the rule, rather than the exception. Such disdain, although technically unassailable, can have devastating consequences, like the Warehouse case.

3. Whether or not Mr. Calvo would have been able to more effectively participate in the Warehouse closing if he had been provided the time is speculative. Whether or not, given the brevity of available time, even if the Florida Bar had agreed to postpone its hearing on April 22, 1985, Mr. Calvo would have elected to assume a role as underwriter's counsel is speculative. That he was not provided such opportunity, or the opportunity to engage in all of the due diligence and factual verification that the Florida Bar now claims was required, is not speculative. That the Florida Bar itself was at least partially responsible for such failure is also not speculative.

4. While the Florida Bar cannot be blamed for the Warehouse fiasco, it is obvious that of all the agencies that have ever existed, it is most estopped from holding Mr. Calvo responsible for that which it itself prevented him from doing.

IV. Mr. Calvo's Background

1. In reaching a decision in this matter and evaluating the veracity of the parties and witnesses, the Court is requested to note that Mr. Calvo has a history of striving for excellence in the practice of law and in his role in society.

2. His parents were unable to pay for his legal education, and, like many other minority lawyers, he worked his way through law school. Mr. Calvo was a full time teacher, coached an equestrian team and headed two academic departments at the same time that he attended law school. Despite such additional responsibilities, Mr. Calvo graduated in the top ten percent of his law school class with a substantial quantity of additional credit hours in topics he deemed important to his professional development.

3. Wanting to be the best possible lawyer, Mr. Calvo thereafter immediately obtained an LLM degree, where he was again at the top of his class.

4. While, at the time, Florida had no continuing legal

educational requirements, Mr. Calvo imposed them on himself and was designated in not one but two areas of the law.

5. Mr. Calvo has always donated his time generously for the benefit of his community and to assist those who cannot afford to pay for legal services. He was one of the featured speakers in the Florida Bar's program on corporate law in 1985, the year of the Warehouse closing, and during the twelve month period following the Warehouse closing, contributed more than $20,000 to help build the Greek Orthodox cathedral in Fort Lauderdale. Despite the pendency of the Florida Bar Case and the attendant demands on his time, he was a founding director of his local Kiwanis club, he served as the chairman and president of his county's parents' & schools' council and served on his local elementary school advisory council.[70] None of such activities

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70. As a result of the decision in the Florida Bar Case, he has resigned from all such positions. However, he continues to make his time available to assist them on an informal basis.

were undertaken for purposes of generating professional clientele but rather, to comply with Mr. Calvo's perceived professional responsibilities to his community.

6. He also served as an unpaid presidential appointee to a local United States Selective System Board,[71] for years, both before and after the Warehouse matter.

7. These factors are not indicative of a person who takes his professional responsibilities lightly, or who meets the unprofessional profile in which the Florida Bar seeks to cast him; rather, they confirm the uncontested testimony of the many persons whose testimony on Mr. Calvo's behalf was presented to the referee in the Florida Bar Case.[72]

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71. An unpopular but critical job.

72. Although such testimony was totally ignored.

V. **Improper Emotional Appeal to Ethnic Background**

The referee in the Florida Bar Case found it important to make a factual finding that Mr. Calvo is Colombian. He did so because, throughout the Warehouse related proceedings, the Securities and Exchange Commission and the Florida Bar have made an issue of such fact. It is a shame that being Colombian is considered a negative factor in this country. That evaluation ignores the actual nature of the Colombian people. It is intolerable that the Florida Bar used such factor as an element in its case and the Florida Supreme Court should not have aligned itself with such blatant impropriety; especially when the Florida Supreme Court's stated policy is that of encouraging an increase in the quantity, quality and role of minority attorneys in our legal system!

VI. **Mitigating v Aggravating Circumstances**

1. The Florida Bar, for the first time, during closing arguments, raised the issue of supposedly aggravating circumstances that justified the severe penalty

of disbarrment. That issue was not only not plead in the Florida Bar Case, but no evidence in support thereof was properly introduced at the hearing. In fact, such allegation and argument was totally refuted by the only testimony on point, that being the testimony of Messrs. Stein, Lipson and Vogel, Father Nicholas Nick and Mrs. Laura Gallagher as to Mr. Calvo's impeccable good character, honesty and integrity; and, the admissions on cross examination by the Florida Bar's witnesses, that Mr. Calvo had always insisted on full disclosure, never counseled improper conduct and that, in Bremer's case, as reflected in his taped, post closing telephone conversations, that Mr. Calvo would never permit anyone to do anything wrong. Indeed, Bremer's taped conversations with his attorney, Granai, after he had gone to the Justice Department, make it clear that, when Mr. Calvo first came to suspect that anything might have been wrong with the Warehouse closing, his advice was that trading in Warehouse stock had to be stopped. Again, there

was no support for the Florida Bar's argument in the record, and in fact, the evidence was overwhelmingly to the contrary. In addition, Mr. Calvo (to his detriment in light of the loss of his materials by the Florida Bar), completely and promptly cooperated with the Florida Bar in its investigation of the Florida Bar Case; and, his state of mind was certainly unusually distracted by the pendency of the Florida Bar's hearing on the date of closing.

2. The Florida Supreme Court's conclusion that Warehouse was not an isolated instance is contrary to the evidence, especially in light of the excerpts from Bremer affidavits included as an exhibit to the Denied Motion for Rehearing. All improprieties alleged occurred, if ever, during the period surrounding the weekend of April 19 through 22, 1985. No evidence of other similar acts was introduced.

3. In light of the foregoing, a weighting of mitigating versus aggravating factors clearly tilts materially in favor of Mr. Calvo.

VII. Reformation

1. Even if this Court were somehow to find that Mr. Calvo was provided all his Constitutionally guaranteed due process rights, that Disciplinary Rule 1-102(A)(6), remained a viable predicate for Bar actions, and, that the evidence at the final hearing supported a conclusion that Mr. Calvo had violated Disciplinary Rule 1-102(A)(6), this Court should reject the Florida Supreme Court's conclusions regarding discipline. It would be unfair to subject Mr. Calvo to discipline in addition to that already imposed by the Securities and Exchange Commission in the 2e proceeding, which was completed during July of 1990, more than three years ago. Under applicable Securities and Exchange Commission law, the Warehouse matter is no longer even a ripe disclosure item as a result of the passage of time since the issuance of the Warehouse injunction, more than six years ago.

2. The Florida Bar introduced absolutely no evidence of any wrongdoing of any kind by Mr. Calvo since

conclusion of the Securities and Exchange Commission sanction period. On the contrary, all of the evidence affirmatively and forcefully asserted that Mr. Calvo is an honorable and competent attorney and productive member of his community. The Florida Bar's inexcusable delays should not be permitted to again destroy Mr. Calvo's life, reputation and practice. If Bar discipline is imposed for the purpose of protecting of the public or to rehabilitate Mr. Calvo, then none can be said to be called for now.

VIII. Dispositive Factors at Investigation or Hearing

1. An investigation of this matter at which a small number of objectively ascertainable facts could be considered would be dispositive of the facts material to a decision in this case. Such facts would merely involve: (i) An examination of and introduction of third party financial reports on Messrs. Jenkins, Baldrica and Scherer for April, 1985; (ii) An examination of Ms. Francesca Daniels; and (iii) An examination of the records of the National As-

sociation of Securities Dealers, Inc., and the Florida Securities Division as to who filed materials on behalf of the underwriter in the Warehouse offering.[1]

2. In light of the procedural deficiencies in the Florida Bar Case, especially the exclusion of Mr. Chamberlin, such factors should be definitively considered and established prior to the imposition of any discipline.

WHEREFORE, the Respondent respectfully requests that this Honorable Court either make a determination that no discipline against the Respondent is warranted or refer this matter to either a grievance committee or special master for disposition.

Respectfully submitted, this 8th day of May, 1994.

\s\William A. Calvo, III\s\
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1. Such investigation would reveal that Mr. Calvo had unquestionably been replaced as underwriter's counsel by the Beers-Wilks Firm.